

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 04-53
Controlling the Assault of Non-Solicited)	
Pornography and Marketing Act of 2003)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	
)	

To: The Commission

COMMENTS OF INTRADO INC.

Intrado Inc.¹ (“Intrado”) hereby respectfully files these Comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking (“NPRM”)² in the captioned docket.

The Commission initiated this proceeding to issue implementing regulations to protect consumers from unwanted mobile service commercial messages (“MSCM”).³ In particular, the Commission seeks comment on how best to carry out the mandate from Congress to protect consumers and businesses from the costs, inefficiencies and inconveniences that result from unwanted messages sent to wireless devices.

Intrado submits that new technological advances available today to Commercial Mobile Radio Service (“CMRS”) providers effectively protect wireless consumers and businesses from unsolicited and unwanted MSCM. Moreover, Intrado urges the Commission to establish a policy framework that enables CMRS providers to deploy network-based filtering solutions, which will foster individual control over personal information and protect personal privacy.

¹ Intrado (NasdaqNM: TRDO) provides the core of the nation’s 9-1-1 infrastructure and delivers innovative solutions to communications service providers and public safety organizations, including complex data management, network transactions, wireless data services and notification services.

² Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. No. 108-187, 117 Stat. 2699 (2003) (*CAN-SPAM Act*).

³ See *id.* Section 14(b).

BACKGROUND

Section 14 of the CAN-SPAM Act requires the Commission, in consultation with the Federal Trade Commission (“FTC”), to issue rules to protect consumers from unwanted mobile service commercial messages by September 26, 2004.⁴ Specifically, sections 14(b), (c) and (d) of the CAN-SPAM Act provide that the FCC, in consultation with the FTC, shall promulgate rules within 270 days to protect consumers from unwanted mobile service commercial messages.

Section 14(b)(1) of the CAN-SPAM Act states that the Commission shall adopt rules to provide mobile consumers with the ability to avoid receiving a “Mobile Service Commercial Message” (“MSCM”) unless the subscriber has expressly authorized such messages beforehand.⁵ Under the CAN-SPAM Act, an MSCM is a “commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service” as defined in 47 U.S.C. § 332(d) “in connection with that service.”⁶

DISCUSSION

I. THE DEFINITION OF MOBILE SERVICE COMMERCIAL MESSAGES SHOULD BE EXTENDED TO COVER OTHER FORMS OF MESSAGING.

Under section 14 of the CAN-SPAM Act, MSCMs are only those electronic mail messages “transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service” as defined in 47 U.S.C. § 332(d) “in connection with that service.”⁷ Section 332(d) defines the term “commercial mobile service” as a mobile service that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public. The Commission equates the statutory term “commercial mobile service” with “commercial mobile radio service” or CMRS used in its rules.

⁴ See *id.* Section 14(b).

⁵ See *id.* Section 14(b)(1).

⁶ *Id.* Section 14(d).

⁷ The Commission has noted that the Act states that an electronic mail message shall include a message sent to a unique electronic mail address. “Electronic mail address” is defined to include two parts: 1) “a unique user name or mailbox;” and 2) “a reference to an Internet domain.”

Under the current interpretation of MSCM, a message originating from within one CMRS network or terminating from another CMRS network destined for a specific telephone number would not be covered under Section 14(b)(1) of the CAN-SPAM Act.

As stated in this NPRM, the legislative history of the Act suggests section 14, in conjunction with the TCPA, was intended to address wireless text messaging. SMS messages are text messages directed to wireless devices through the use of the telephone number assigned to the device. In order to protect consumers and business from unwanted and unsolicited commercial messages, the Commission should extend the definition of MSCMs to include Short Message Services (“SMS”) text messages and Multimedia Message Services (“MMS”) messages that are commercial in nature, which originate and/or terminate through a CMRS provider’s network irrespective of whether the message traverses the Internet.

II. THE COMMISSION SHOULD ENCOURAGE ADOPTION OF NETWORK-BASED TECHNOLOGICAL SOLUTIONS THAT ENABLE CONSUMERS TO BLOCK UNWANTED MSCMs.

Several regulatory bodies throughout the world have either implemented or are considering promulgating rules to stop and reduce unwanted MSCMs through various registry mechanisms that allow mobile consumers to opt-in (express prior authorization) and opt-out (negative affirmation). Commonly, these initiatives have not been effective in reducing unsolicited MSCMs, nor do they provide any substantial protection to consumers or businesses.

Moreover, the Commission correctly recognizes that such regulatory schemes may be difficult to administer and enforce because they may simply be ignored. Unwanted and unsolicited MSCMs often originate from foreign CMRS provider networks that are outside of the Commission’s jurisdiction. For instance, an MSCM might originate from a source outside of the United States and traverse the Signaling System 7 (“SS7”) international network rather than the Internet. In this situation, imposing regulatory obligations on the sender would be very difficult.

The CAN-SPAM Act clearly requires the Commission to protect consumers from unwanted mobile service commercial messages,⁸ but it does not prescribe a specific

⁸ *See id.*

methodology for effectively implementing such broad policies. The Commission, therefore, is in a unique position to evaluate advances in technology that enable CMRS providers to detect, filter and block unwanted MSCMs that originate from different network access points. Such network-based technology enables CMRS providers with the ability to detect and block unsolicited MSCMs based on message content, originating source and type of message.

Section 14(b)(2) of the CAN-SPAM Act specifically requires that the Commission develop rules that “allow recipients of MSCMs to indicate electronically a desire not to receive future MSCMs from the sender.”⁹ With a network-based filtering solution, individual mobile consumers and businesses are able to block or allow MSCMs originated from certain mobile numbers and personally define certain black lists and white lists through various user interfaces. Moreover, parental control rules could be defined within these network-based registries to protect under age children from receiving explicit and offensive MSCMs. Such a technological solution even offers CMRS providers the flexibility to apply global filtering settings that will be enforced across all CMRS networks.¹⁰

Beyond certain types of unwanted and unsolicited content that could be blocked, CMRS providers would have the ability to detect malicious viruses embedded in certain types of messages that have the potential to infect a mobile phone.

CONCLUSION

The Commission has correctly recognized that adopting a broad based policy to protect consumers and businesses from the costs, inefficiencies and inconveniences that result from unwanted messages sent to wireless devices is a complex undertaking. Intrado encourages the Commission to consider the sophisticated way that unwanted MSCMs are sent in the form of text messages over mobile devices and external applications connected to a CMRS provider’s network. As seen in Europe and other countries throughout the world, certain types of MSCMs are more difficult to detect and block because they typically do not traverse the Internet and are often originated in a CMRS provider’s network via SS7 outside

⁹ *Id.* Section 14(b)(2).

¹⁰ Intrado notes that there are a number of promising public safety applications for mobile service messaging technology (e.g., mass notification, Amber Alert). Any rules or regulations promulgated by the Commission should strike an appropriate balance between protecting consumers from unwanted commercial messages and allowing such life-saving public safety applications to develop and be widely deployed.

the recipient's country. Such messages may be filtered on the SS7 network before they reach a mobile device.¹¹

For the foregoing reasons, Intrado believes it is in the public interest that the Commission adopts rules that encourage adoption of network-based filtering solutions that allow consumers and businesses to block or allow certain MSCMs.

Respectfully Submitted,

Intrado Inc.

/s/ _____
Mary Boyd
Vice President Government and
External Affairs

Intrado Inc.
1601 Dry Creek Drive
Longmont, CO 80503
Telephone: (720) 494-5800
Facsimile: (720) 494-6600

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¹¹ There are solutions available today that give recipient (including parents) the power to define personal filtering settings, based on content, message type and origin.